

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EARNEST CASSELL WOODS,

Plaintiff,

v.

THE VETERANS ADMINISTRATION, et
al.,

Defendants.

Case No. [15-cv-05135-JD](#)

ORDER TO SHOW CAUSE

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff has also filed an application to proceed in forma pauperis.

The Prison Litigation Reform Act of 1995 (“PLRA”), provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The phrase “fails to state a claim on which relief may be granted,” as used in § 1915(g), “parallels the language of Federal Rule of Civil Procedure 12(b)(6).” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (internal quotation marks omitted). A case is “frivolous” within the meaning of § 1915(g) if “it is of little weight or importance: having no basis in law or fact.” *Id.* (internal quotation marks omitted). The court may count as strikes dismissals of district court cases as well as dismissals of appeals. *See Rodriguez v. Cook*, 169 F.3d 1176, 1178 (9th Cir. 1999) (prisoner does not get three frivolous claims and three frivolous appeals before being barred by § 1915(g)). A dismissal under § 1915(g) means that a prisoner cannot proceed with his action as a pauper under § 1915(g), but he

1 still may pursue his claim if he pays the full filing fee at the outset of the action.

2 It appears that plaintiff has at least three strikes pursuant to § 1915(g):

- 3 i. *Woods v. Carey*, No. 05-1157 MJJ (N.D. Cal.), dismissed for failure to state
4 a claim.
- 5 ii. *Woods v. Carey*, No. 05-0049 MCE DAD (E.D. Cal.), dismissed for failure
6 to state a claim.
- 7 iii. *Woods v. Curry*, No. 10-1859 JSW (N.D. Cal.), dismissed for improper
8 joinder of unrelated claims against different defendants.
- 9 iv. *Woods v. Curry*, No. 13-16045 (9th Cir.), in forma pauperis denied because
10 appeal was frivolous.
- 11 v. *Woods v. Marshall*, No. 11-8554 UA OP (C.D. Cal.), dismissed for failure
12 to state a claim.

13 Plaintiff shall show cause within **fourteen (14) days**, why this case should not be deemed
14 three strikes barred and the application to proceed in forma pauperis denied. Failure to reply will
15 result in dismissal.

16 **IT IS SO ORDERED.**

17 Dated: January 7, 2016

18 
19 JAMES DONATO
20 United States District Judge
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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
District Court, Northern District of California.

That on January 7, 2016, I SERVED a true and correct copy(ies) of the attached, by
placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

Earnest Cassell Woods ID: D58091
A4-233
P.O. Box 901
Imperial, CA 92251

Dated: January 7, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO